



## **Legislative Bulletin.....January 24, 2007**

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**H.Res. 78**—To Amend the Rules of the House of Representatives to permit Delegates and the Resident Commissioner to the Congress to cast votes in the Committee of the Whole House on the State of the Union

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### **Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$0

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.Res. 78—To Amend the Rules of the House of Representatives to permit Delegates and the Resident Commissioner to the Congress to cast votes in the Committee of the Whole House on the State of the Union (*Hoyer, D-MD*)**

**Order of Business:** The resolution is scheduled to be considered on Wednesday, January 24<sup>th</sup>, subject to a structured rule (H.Res. 86), allowing one amendment to be offered (summarized below), waiving all points of order against the bill and its consideration, and providing for one motion to recommit **without** instructions.

**Summary:** H.Res. 78 would allow currently non-floor-voting Delegates and the Resident Commissioner (from Puerto Rico) to vote on the House floor when the House is in the “Committee of the Whole” (i.e. when the House is considering amendments to legislation—see “Additional Background” section below).

Clause 3(a) of House Rule III currently provides for the Delegates and the Resident Commission (RC) to possess “the same powers and privileges” as other members of standing committees (to which they are to be appointed in the same way as other Members of the House). <http://www.rules.house.gov/ruleprec/RIII.htm>

H.Res. 78 would amend this clause of House Rules to give Delegates and the RC “the same powers and privileges as Members of the House” while in the Committee of the Whole, while retaining the provision about standing committees.

Furthermore, H.Res. 78 would also allow Delegates and the RC to act as Chairman of the Committee of the Whole. Currently, Rule XVIII, Clause 1, does not specify whether the Chairman could be a Delegate or RC (<http://www.rules.house.gov/ruleprec/RXVIII.htm>).

Lastly, H.Res. 78 would add a paragraph (3h) to Rule XVIII to provide that, whenever a recorded vote on any question in the Committee of the Whole has been decided “by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive,” the Committee of the Whole would rise and the Speaker would have to put such question *de novo* without intervening motion (i.e. immediately reconsider the same question, as if it had not been considered before). The Speaker would then announce the vote on that question, and the Committee of the Whole would immediately resume its sitting without intervening motion. (Note: by “question,” this section refers most often to the question of whether the Committee of the Whole wants to adopt an amendment.)

The re-vote procedures are designed to comply with the judge’s decision in *Michel v. Anderson* (see “Additional Background” below).

**NOTE:** As a delaying tactic, Republicans could ask for re-votes on all roll-calls in which delegates cast votes.

**Summary of the Amendment Made in Order under the Rule (H.Res. 86):**

*Note: the amendment sponsor may not actually offer this amendment on the floor.*

**Kirk (R-IL).** Provides that the underlying resolution’s expanded powers in the Committee of the Whole for delegates and the resident commissioner (including the power to serve as the Committee’s chairman) would only be in effect in sessions of Congress for which the Clerk of the House certifies that the jurisdiction represented by the delegate or RC is subject to federal income, estate, and excise taxes in the same manner and to the same extent as a resident of a state.

**Additional Background:**

### Committee of the Whole

The Committee of the Whole is a committee of all House Members on the floor primarily for the consideration of amendments. Think of it as a large mark-up session (like in the proceedings of standing committees). A quorum in the Committee of the Whole is 100 Members (as compared to 218 in the House), and debate is conducted under the five-minute rule (as compared to the hour-rule in the House). Certain motions, such as the motion for the previous question, a motion to adjourn, a motion to reconsider, and a motion to recommit to committee, are not allowed to be offered in the Committee of the Whole and must be offered in the House. Suspensions also cannot be considered in the Committee of the Whole.

**NOTE: The Committee of the Whole has not sat yet this year, since the Majority has not allowed amendments on any legislation.**

Additional Note: The formal name of the Committee of the Whole is “The Committee of the Whole House on the State of the Union.” This name is merely a formality and has nothing to do with the President’s State of the Union Address.

### Delegates and the Resident Commissioner—Who Are They?

The current delegates in the House of Representatives are those from:

- The District of Columbia (Eleanor Holmes Norton: <http://www.norton.house.gov/>);
- American Samoa (Eni Faleomavaega: <http://www.house.gov/faleomavaega/>);
- Guam (Madeleine Bordallo: <http://www.house.gov/bordallo/>);
- Puerto Rico (delegate known as the Resident Commissioner, four-year term) (Luis Fortuño: <http://www.house.gov/fortuno/>); and
- The Virgin Islands (Donna Christensen: <http://www.house.gov/christian-christensen/>).

All delegates are Democrats, except Mr. Fortuño from Puerto Rico. The Commonwealth of the Northern Mariana Islands (population: 69,221) does NOT have a delegate to Congress.

According to the U.S. Census Bureau, the territories and district represented by the delegates and RC have the following populations (as of the 2000 Census, unless otherwise indicated):

- The District of Columbia: 581,530 (as of July 1, 2006)
  - American Samoa: 57,291
  - Guam: 154,805
  - Puerto Rico: 3,927,776 (as of July 1, 2006)
  - The U.S. Virgin Islands: 108,612
- <http://www.census.gov/popest/states/tables/NST-EST2006-01.xls>  
<http://www.census.gov/population/www/cen2000/islandareas.html>

The average congressional district (as of the 2000 Census) contains 646,952 people.  
[http://nationalatlas.gov/articles/boundaries/a\\_conApport.html#two](http://nationalatlas.gov/articles/boundaries/a_conApport.html#two)

Delegates, representing U.S. territories and municipalities that do not have statehood, have served in the House since the late 18<sup>th</sup> Century. The territories authorized to send delegates to the House in the 20<sup>th</sup> Century were:

- Puerto Rico (1900);
- Hawaii (1900);
- The Philippine Islands (1902);
- Alaska (1906);
- The District of Columbia (1970);
- The U.S. Virgin Islands (1972);
- Guam (1972); and
- American Samoa (1978).

<http://www.congress.gov/erp/rl/html/RL32340.html>

#### Delegate Voting

Source for this section: <http://www.congress.gov/erp/rl/html/RL32340.html>

On January 13, 1795, the House appointed its first territorial representative to membership on a select committee. Nearly 80 years later, the House made its first permanent assignment of a delegate to a standing committee. In both instances, the delegates could debate but not vote (same as on the House floor). It was not until the 1970s that more delegate positions were created and any delegate was given committee-voting privileges (Puerto Rico in 1970; American Samoa, District of Columbia, Guam, and the Virgin Islands throughout the rest of the decade).

In January 1993, the Democratic majority amended House Rules to allow delegates to vote in the Committee of the Whole. The Rules were amended so that, in the event that a question before the Committee of the Whole was decided by the margin of the delegates' votes, the Committee would rise and an automatic re-vote in the House would be triggered (without the participation of the delegates).

According to the Congressional Quarterly Almanac, there were 189 roll-call votes in 1993 in which delegates were eligible to vote. DC Delegate Norton voted in 98% of them; Virgin Islands Delegate de Lugo voted in 95% of them; Guam Delegate Underwood 83%; American Samoa Delegate Faleomavaega 62%, and Puerto Rican RC Romero-Barceló 58%. Data for 1994 were not immediately available.

A group of Republican House Members (led by Minority Leader Bob Michel) filed a lawsuit (*Michel v. Anderson*), challenging the increased powers for delegates, and arguing that the change violated the Constitution's requirement that legislators must be representatives of the people of the states. The plaintiffs challenged the notion that the Committee of the Whole is the same as a standing or select committee and argued that in reality it was tantamount to the full House. The suit further alleged that the House did not have the authority to unilaterally expand delegate powers and instead required a constitutional amendment.

The House defendants (the five delegates plus the Clerk of the House) countered that the House of Representatives was constitutionally empowered to “determine the Rules of its Proceedings” and that the Committee of the Whole is indeed a separate committee (like the ones in which delegates already had voting power).

In March 1993, Judge Harold H. Greene of the U.S. District Court for the District of Columbia upheld the changes to the House rules that gave delegates voting privileges in the Committee of the Whole. However, he noted that, “If the only action of the House of Representatives had been to grant to the Delegates from the District of Columbia, Guam, Virgin Islands, and American Samoa, and the Resident Commissioner from Puerto Rico the authority to vote in the Committee of the Whole, its action would have been plainly unconstitutional.” That is, the automatic re-vote provision was the constitutional escape hatch for granting the increased powers for delegates and is the basis for the re-vote provision in H.Res. 78 today.

In January 1994, the U.S. Court of Appeals for the District of Columbia Circuit upheld the constitutionality of the Greene decision. However, in January 1995, the new Republican majority amended House Rules to strike the provision allowing delegate voting in the Committee of the Whole.

**RSC Bonus Fact:** The District of Columbia was authorized to send a delegate to the U.S. House from 1871 to 1874, and then again in 1970 through the present.

<http://www.congress.gov/erp/rl/html/RL32340.html>

**Committee Action:** On January 19, 2007, the resolution was referred to the Rules Committee, which took no subsequent public action.

**Possible Conservative Concerns:** Conservatives may be concerned, as the Republican plaintiffs were in *Michel v. Anderson* (see “Additional Background” section above), that the resolution will grant full-House legislative powers to individuals who are not “chosen every second year by the People of the several states,” as required by Article I, Section 2, Clause 1 of the U.S. Constitution. Delegates, by definition, do not represent states, and in the case of Puerto Rico, the term of office is four years.

Some conservatives have raised the concern that allowing delegates to vote on, for example, tax-related amendments in the Committee of the Whole, would let them affect certain tax laws that do not affect their territories. Social Security tax laws apply in the territories, but most other U.S. tax laws (including those for income taxes and excise taxes) either do not apply at all in the territories, or do not apply in the same way.

<http://www.congress.gov/erp/rl/pdf/RL32708.pdf>

Lastly, some conservatives may be concerned that the proponents of statehood for the District of Columbia will cite this loosening of the legislative rules for delegates as grounds for granting full voting rights—and eventual statehood—to the District. The U.S. Constitution grants Congress the power “to exercise exclusive Legislation in all Cases whatsoever, over such District....”

**Cost to Taxpayers:** The resolution would not yield any direct costs to taxpayers.

**Does the Bill Expand the Size and Scope of the Federal Government?:** The resolution would allow delegates to vote in the Committee of the Whole, bringing the number of potential voters in the Committee from 435 to 440.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks?:** An earmarks statement required under House Rule XXI, Clause 9(a) was not available at press time.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable. The clauses of the U.S. Constitution that may be relevant to this resolution include:

Article I, Section 2, Clause 1: “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States...”

Article I, Section 5, Clause 2: “Each House may determine the Rules of its Proceedings...”

Article I, Section 8, Clause 17: “[Congress shall have Power] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may...become the Seat of the Government of the United States...”

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